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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,778	03/30/2005	Michael A. Epstein	US020358US	2264
24737	7590	01/21/2009	EXAMINER	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS			PACHURA, REBECCA L	
P.O. BOX 3001			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/529,778	<b>Applicant(s)</b> EPSTEIN, MICHAEL A.
	<b>Examiner</b> Rebecca L. Pachura	<b>Art Unit</b> 2436

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 06 November 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-21 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 30 March 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1668)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

***DETAILED ACTION***

***Oath/Declaration***

1. The corrected Application Data Sheet submitted on 11/12/2008 is duly noted.

***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned

with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1, 2, 3, 4, 6, 7, 9, 10, 11, 12 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 4, 5, 8, 9, 11, 12, 13, 14 of copending Application No. 10529353.** Although the conflicting claims are not identical they are not patentable distinct from each other because the instant application determines the proximity of one node to another by measuring the query-response time and the processing time. The copending application determines the proximity of one node to another by measuring a communication time. It would be obvious to one of ordinary skill in the art at the time of the applicant's invention that the processing time and the query-response time is another way to express a communication time.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

*Status of Claims*

3. **Claims 1-21 are pending in this Office Action.**

***Response to Arguments***

4. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

***Applicant's Invention as claimed:***

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 20030184431 (Lundkvist) in view of US 6363477 (Fletcher) and in view of US 6088450 (Davis).**

**As to claim 1,** (Original) Lundkvist discloses a method of determining proximity of a target node to a source node, comprising:

communicating a query from the source node to the target node (Lundkvist page 3, paragraph 31),

communicating a response from the target node to the source node (Lundkvist page 3, paragraph 32),

receiving the response at the source node (Lundkvist page 3, paragraph 32),

determining a measure of query-response time between communicating the query and receiving the response (Lundkvist page 3, paragraph 32). Lundkvist does not explicitly teach

the response from the target node including a measure of processing time required to generate the response based on the query, and determining the proximity of the target node based on a communication time that depends upon a difference between the measure of query-response time and the measure of processing time.

However, Fletcher discloses the response from the target node including a measure of processing time required to generate the response based on the query (Fletcher column 18, lines 28-44), and determining the proximity of the target node based on a communication time that depends upon a difference between the measure of query-response time and the measure of processing time (Fletcher column 18, lines 28-44).

It would be obvious to one of ordinary skill in the art at the time of the applicant's invention to combine Lundkvist and Fletcher because Lundkvist does not specifically calculate the query-response time without subtracting the processing time to get the true network latency time but, Fletcher calculates this performance metric exactly to determine the proximity of one node to another node (Fletcher column 18, lines 57-62).

**As to claim 2,** (Original) Lundkvist discloses the method of claim 1, wherein the query and response correspond to at least a portion of a cryptographic key-exchange protocol (Lundkvist page 3, paragraphs 29, 31, and 32).

**As to claim 3,** (Original) Lundkvist discloses the method of claim 2, wherein the key-exchange protocol corresponds to a Needham-Schroeder key-exchange protocol (Lundkvist page 3, paragraph 29: a symmetric key encryption which is a type of Needham-Schroeder protocol).

**As to claim 4,** (Original) Lundkvist discloses the method of claim 1, wherein the query and response correspond to at least a portion of an OCPS protocol (Lundkvist page 3, paragraphs

29-34: teaches an authentication stage, a key exchange stage, a key generation stage, and a data transmission stage of the OCPS protocol).

**As to claim 5,** (Original) Lundkvist discloses the method of claim 1, wherein the measure of processing time at the target node is predefined (Lundkvist page 4, paragraph 0041).

**As to claim 6,** (Original) Lundkvist discloses the method of claim 1, wherein determining the proximity includes comparing the communication time to a threshold value that distinguishes between local and remote nodes (Lundkvist page 4, paragraph 0042 and paragraph 0049).

**As to claim 7,** (Original) Lundkvist discloses the method of claim 1, further including restricting communications with the target node based on the proximity (Lundkvist page 2, paragraph 0018).

**As to claim 8,** (Original) Lundkvist discloses the method of claim 1, wherein the response is cryptographically signed by the target node (Lundkvist page 3, paragraph 0034).

**As to claims 9-21,** claims 9-21 encompass the same scope of the invention as those of claims 1-8 with the additions of a target “a communication device”, a target “a processor”, a source “a communication device”, and a source “a processor” (Lundkvist page 4, paragraph 0051).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rebecca L. Pachura whose telephone number is (571) 270-3402. The examiner can normally be reached on Monday-Thursday 10:00 am-8:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami can be reached on (571) 272-4195. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Rebecca L Pachura/  
Examiner, Art Unit 2436

/Nasser G Moazzami/  
Supervisory Patent Examiner, Art Unit 2436